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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,769	12/04/2003	Noel Mascarenhas	06078/231001	7590
Jonathan P. Osha Rosenthal & Osha, L.L.P. Suite 2800 1221 McKinney Street Houston, TX 77010			EXAMINER STERLING, AMY JO	
			ART UNIT 3632	PAPER NUMBER
DATE MAILED: 02/14/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/727,769	Applicant(s) MASCARENHAS ET AL.	
	Examiner Amy J. Sterling	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 November 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the **Final Office Action** for application number 10/727,769 Swing Down Fuel Tank Bracket, filed on 12/4/03. Claims 1-15 are pending. This **Final Office Action** is in response to applicant's reply dated 11/23/05. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "forklift truck" (claims 2, 11), the "dampener" (claim 9), "the means for dampening" (claim 15) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

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of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 9 and 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification does not adequately teach the "dampener" or "means for damping" The mere suggestion of a "dampener" that may be located in several locations does not adequately enable one skilled in the art to make or use the invention. the term "means for damping" is not disclosed by the specification in such a way to convey what the term "means" entails.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 9 and 15 recite a “dampener” and a “means for damping” and it is unclear as to which element this limitation is referring.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 9 and 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 6637706 to Kim et al.

The patent to Kim et al. discloses a single stage swing down fuel bracket having a frame means (10) immovably mounted onto a fork lift vehicle (2), a cradle (20) or support means operatively connected substantially parallel to a counterweight the frame (10), a hinge (16, 32) or rotational means that pivotally connects a first end of the cradle to a first end of the frame and a latch (18, 0) or means for releasably engaging having a first portion (18) disposed on a second end of the frame and a second portion (70) disposed on a second end of the cradle, wherein the first portion of the latch is

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releasably engaged to the second portion of the latch, wherein after the latch is disengaged, the cradle is rotationally maneuverable between a retracted position and an extended position in single stage by simultaneously rotating outwardly and downwardly in relation to the vehicle, the cradle (20) being positioned at an angle to a side surface of the counterweight. Kim et al. also teaches a gas spring (50) or means for balancing a rotation of the means for supporting, having a first end operatively connected to the frame, and a pivot screw operatively connected a second end of the gas spring to the first end of the cradle, the gas spring providing a near full assist for maneuvering and resisting motion of the cradle, with a second latch (64), a set of straps (46a) operatively coupled to the cradle and arranged to be releasably engaged around a circumference of the fuel tank, and a dampener (40a) or means for damping,

Claims 1, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 5845940 to Colburn.

Colburn teaches a frame (26) immovably mounted on a vehicle, a cradle (64) operatively connected to the frame, a hinge (46) that pivotally connected a first end of the cradle to a first end of the frame and a latch (52) having a first portion disposed on a second end of the frame and a second portion disposed on a second end of the cradle, wherein the first portion of the latch is releasably engaged with the second portion of the latch, wherein after the latch is disengaged, the cradle is rotationally maneuverable between a retracted position and an extended position in a single stage, wherein the cradle may be maneuvered between the retracted position and the extended position by

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simultaneously rotating outwardly and downwardly to an angle of about 40 degrees in relation to the vehicle and an alignment pin (42).

Response to Arguments

The applicant has argued with respect to the Drawings that forklift truck is shown by 100, 200, and 300. This is unpersuasive. It is clear that elements 100, 200 and 300 have the intention to depict a vehicle in the figures, however, if the claim recites a specific "type" of vehicle, such as a "truck" containing a "forklift", then this must be clearly shown in the drawings. The element is not clearly shown to be a "truck" nor does it clearly show that the truck contains a "forklift".

The applicant has also traversed the Drawing objection stating that the drawings teach a dampener and alludes that the "gas spring" is the dampener by citing generally paragraphs 0046-0050 of the Specification. This is unpersuasive in that this is clearly not the case. The dampener is referred to as a separate element from the gas spring. The specification reciting, "In some embodiments, the fuel tank bracket (406) is fitted with a motion damper designed to slow a free fall motion" (See page 13, paragraph 0050), which is specifically distinguished from the gas spring, which is recited, "In some embodiments a gas spring (418) is selected so that it will provide almost a full assist in the upward motion (See page 13, paragraph 0049). It is quite evident that the two devices are used in different embodiments for different reasons and that they are not the same device. The drawing objection is not withdrawn.

This argument applies to the rejection under 35 USC 112, first paragraph for non-enablement as well. The applicant is arguing that the gas spring is the means for damping and this is clearly not the case in the specification as shown above. The dampening means is not adequately taught because it is not shown what elements are contained in the damping device or how it is attached to the recited structure. The applicant also argues that one of ordinary skill would “know” what this mechanism entailed. This is unpersuasive in that absent any structural details about the elements contained within a damping means, the device can be an infinite number of devices.

Also it is noted that the term “dampening means” is not disclosed by the specification in such a way to convey what the term “mean” entails.

The same arguments apply to the rejection under 35 USC 112, second paragraph. It is unclear as to what structure the dampening means contains and the claim is indefinite because the dampening means could contain an infinite number of structures.

The applicant has argued that the reference to Kim does not teach a device that can be “maneuverable between a retracted position and an extended position in a single stage” or a device that can be simultaneously rotating outwardly and downwardly in relation to the vehicle”. These arguments are unpersuasive for two reasons. First, the “timing” of steps that incorporate the “use” of the device do not contain structural weight in the claim, so the timing of a “stage” or “simultaneous” are not given structural weight because they are an indication of “when” something happens. Secondly, even if the “timing” was given structure, it is evident that the Kim reference meets both

limitations. The term "stage" has not been defined and may contain an infinite amount of time and or actions. It cannot be assumed to be limited to a defined action unless those limitations are clearly described by the specification and inserted into the claim. Also, it is clear that once the cradle as taught by Kim, clears the side edge of the truck, the device will continue to be outwardly rotatable and downwardly rotatable "at the same time" thereby meeting the "simultaneous" requirement.


Conclusion

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action. Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823. The examiner can normally be reached (M-F 8 a.m.-5:00 p.m.). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Robert Olszewski can

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be reached at 571-272-6788. The fax machine number for the Technology center is 571-273-8300 (formal amendments) or 571-273-6823 (informal amendments and communications). Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600.


Amy J. Sterling
2/3/06